

To CC if  
Petitioned

INTERNAL REVENUE SERVICE

North Atlantic Region

APR 15 1993

Department of the Treasury

Address any reply to:  
IRS Appeals Office  
10 Causeway St., Rm 493  
Boston, MA 02222-1083

Person to Contact:  
[REDACTED]

Telephone Number:  
[REDACTED]

Refer Reply to:  
[REDACTED]

CERTIFIED MAIL

Date:

Gentlemen:

This is our Final Adverse Determination/Ruling Letter concerning your organization's request for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

The evidence presented indicates that you were formed as an unincorporated association on [REDACTED]. Your articles of association list your purposes as follows:

This is a non-profit charitable association formed for the cost of a donor search and marrow transplant for [REDACTED], a minor child diagnosed with [REDACTED] syndrome and no part of its income shall inure or be payable to or for the benefit of any member, officer, or individual.

Your activities consist of various fund raisers.

Your income is derived from gifts, grants and contributions. Disbursements will be for fund-raising expenses and to fulfill the purpose of the association.

Section 501(c)(3) of the Code provides, in pertinent part, for the exemption from Federal income taxes organizations that are organized and operated exclusively for charitable and educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a) of the Internal Revenue Code Regulations provides that in order to be exempt under Sec. 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in Sec. 501(c)(3). If an organization fails to meet either the organizational or operational tests, it is not exempt.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science, and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operating exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in Section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in Section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local Government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

Revenue Ruling 67-367, 1967-2 CB-188 denied exemption to an organization whose sole activity is the operation of a "scholarship fund" plan for pre-selected, specifically named individuals.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), the Tax Court upheld the Service's position that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, it held this was a private trust, not a charitable one.

In Wendy L. Parker Rehabilitation Foundation, Inc. v. C.I.R., TC Memo 1986-348, the Tax Court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim.

Like the organization in Rev. Rul. 67-367 and the above Court cases, your organization is organized and operated for the benefit of a specific individual. Since your organization is not operated for the benefit of an indefinite class of individuals, it does not meet the requirements for exemption under Section 501(c)(3) of the Internal Revenue Code.

In addition, your organizing document fails to limit your organization to one or more exempt purposes within the purview of Section 501(c)(3) of the Code. Also, your organizing document does not contain a dissolution provision that dedicates your assets to an exempt purpose. Therefore, you do not meet the organizational test requirements of Section 1.501(c)(3)-1(b) of the Regulations.

Accordingly, your organization does not qualify for exemption under Section 501(c)(3) of the Internal Revenue Code. Therefore, you are required to file Federal income tax returns on Form 1120 or 1041.

Contributions to your organization are not deductible under Section 170 of the Code.

If you decide to contest this determination under the declaratory judgment provisions of Section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the District Court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

As provided in Section 6104(c) of the Internal Revenue Code and applicable regulations, the appropriate State Officials will be notified of this determination.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

[REDACTED]  
Acting Commissioner

By:

[REDACTED]  
Associate Chief  
Boston Appeals Office

Internal Revenue Service  
District Director

Department of the Treasury

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date:

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

A review of your application shows that you were formed as an unincorporated association on [REDACTED]. Your articles of association list your purposes as follows:

This is a non-profit charitable association formed for the cost of a donor search and marrow transplant for [REDACTED], a minor child diagnosed with [REDACTED] syndrome and no part of its income shall inure or be payable to or for the benefit of any member, officer, or individual.

Your activities consist of various fund raisers.

Your income is derived from gifts, grants and contributions. Disbursements will be for fund-raising expenses and to fulfill the purpose of the association.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Section 1.501(c)(3)-1(d)(2) of the Regulations provides that the term "charitable" includes relief of the poor and distressed, advancement of education and science and the promotion of social welfare designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations states that "an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders."

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Like the organization in Rev. Rul. 67-367 and the above court cases, your organization is organized and operated for the benefit of a specific individual. Since your organization is not operated for the benefit of an indefinite class of individuals it does not meet the requirements for exemption under section 501(c)(3) of the Internal Revenue Code.

In addition, your organizing document fails to limit your organization to one or more exempt purposes within the purview of section 501(c)(3) of the code. Also, your organizing document does not contain a dissolution provision that dedicates your assets to an exempt purpose. Therefore, you do not meet the organizational test requirements of section 1.501(c)(3)-1(b) of the Regulations.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

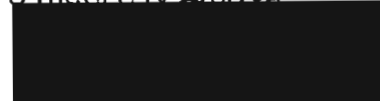
If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours



District Director

cc:



Enclosure: Publication 892